

Hatfield, Darl

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: ADAMS GOLF, INC. : CONSOLIDATED
SECURITIES LITIGATION : C.A. NO. 99-371 KAJ

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ORAL DEPOSITION OF DARL HATFIELD

Thursday, June 8, 2006

The oral deposition of DARL HATFIELD was held at the law offices of Akin Gump Strauss Hauer & Feld, LLP, 1700 Pacific Avenue, Suite 4100, Dallas, Texas, from 9:34 a.m. to 12:52 p.m., before Jamie K. Israelow, a Certified Shorthand Reporter in and for the State of Texas, Registered Professional Reporter, Certified Realtime Reporter and Certified LiveNote Reporter.

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1845 Walnut Street, 15th Floor

Philadelphia, PA 19103

(215) 241-1000 (888) 777-6690

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10:06:49	1 Q Okay. In going back to the	10:09:33	1 taking legal action against Costco?
10:06:51	2 conversation in the car, did -- whether it was --	10:09:36	2 A None.
10:06:55	3 I guess it was Gonsalves who said something to	10:09:36	3 Q Were you present for strategy
10:06:58	4 Barney. It's not that important, but I'm just --	10:09:40	4 discussions or --
10:07:01	5 now, was that discussed at that time because the	10:09:40	5 A No.
10:07:06	6 information had just been learned, or was it	10:09:43	6 Q Okay. No informal discussions with
10:07:08	7 discussed because it was a concern during the road	10:09:44	7 Barney Adams saying: This is one option that we
10:07:15	8 show?	10:09:47	8 could pursue?
10:07:16	9 A It was not a concern. The only	10:09:48	9 A No.
10:07:18	10 concern that anyone voiced was the fact that it	10:09:49	10 Q Okay. To the best of your knowledge,
10:07:21	11 was -- the clubs were being sold by somebody that	10:09:50	11 who was involved in any discussions of that type,
10:07:23	12 was not an authorized dealer, that didn't have	10:09:56	12 if they occurred?
10:07:28	13 people that could show the end user how to -- how	10:09:57	13 A I have no idea.
10:07:37	14 to use the club in terms of what type of shafts	10:09:59	14 Q Okay. So in other words, the first
10:07:37	15 they needed or lofts, et cetera.	10:10:01	15 time you heard about any legal action against
10:07:37	16 Q Right. In -- if you're able to	10:10:04	16 Costco was when you saw this press release?
10:07:41	17 recall, was -- during this conversation in the car	10:10:07	17 A No. In the car --
10:07:45	18 on the road show, was Barney surprised by the	10:10:09	18 Q Oh.
10:07:48	19 information? Did he exhibit -- was he surprised?	10:10:09	19 A -- when we were -- I overheard the
10:07:52	20 A He seemed surprised, and he was upset	10:10:12	20 discussion, Barney talked about taking some kind
10:07:56	21 because he had told the authorized retailer group	10:10:15	21 of action --
10:08:00	22 that we would not sell to discount warehouses and	10:10:17	22 Q Okay.
10:08:05	23 such.	10:10:18	23 A -- to determine who was selling to
10:08:05	24 Q And are you able to recall how long	10:10:19	24 the unauthorized dealer.
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10:08:07	1 the conversation was in the car?	10:10:22	1 Q Okay. And it would appear this is
10:08:08	2 A It was very short.	10:10:24	2 the action that was taken, or one of the actions,
10:08:10	3 Q Okay. A couple of minutes?	10:10:28	3 very possibly?
10:08:21	4 A Yes.	10:10:29	4 A Yes.
10:08:21	5 Q This next document, which dovetails	10:10:40	5 Q Okay. Just a moment, if I may.
10:08:24	6 right with your testimony, is previously marked	10:10:54	6 Have you -- during your 30 --
10:08:29	7 Exhibit 77.	10:10:57	7 I believe you testified a 30-year tenure at KPMG.
10:08:33	8 MR. BESSETTE: Thanks.	10:11:02	8 Had you ever heard of gray marketing, as we've
10:08:34	9 MR. MARA: We're all familiar	10:11:09	9 defined it this morning?
10:08:35	10 with it.	10:11:10	10 A No.
10:08:40	11 Q (By Mr. Mara) Please take a moment	10:11:10	11 Q So you -- it -- it was not a concept
10:08:41	12 to familiarize yourself.	10:11:14	12 that you were familiar with from your tenure at
10:08:45	13 MR. MARA: While you're doing	10:11:16	13 KPMG?
10:08:45	14 that, for the record, it's Adams 001494, as I said	10:11:17	14 A No, it was not.
10:08:53	15 previously, marked Exhibit 77.	10:11:25	15 Q What is your -- I think it's
10:09:06	16 Q (By Mr. Mara) Have you seen	10:11:30	16 reasonable for me to say, looking -- given the
10:09:08	17 Exhibit 77 prior to this morning?	10:11:33	17 various exhibits and testimony, that gray
10:09:14	18 A Yes.	10:11:35	18 marketing is not a desirable event for a company?
10:09:14	19 Q And when -- when did you see	10:11:43	19 MR. BESSETTE: Objection. I
10:09:16	20 Exhibit 77?	10:11:43	20 think that misstates the record.
10:09:19	21 A To the best of my knowledge, it was	10:11:46	21 Q (By Mr. Mara) Is that -- a company
10:09:21	22 sometime after I returned from the road show.	10:11:47	22 doesn't want its products in the gray market. Is
10:09:26	23 Q Okay. Just the general question:	10:11:49	23 that a general -- as a general proposition, fair
10:09:27	24 Did you -- what role, if any, did you play in	10:11:52	24 to say?

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<p>12:31:57 1 meetings of the board of directors in 1998 a</p> <p>12:32:03 2 common thing, or was this a one-time deal?</p> <p>12:32:05 3 A Oh, I think there were several</p> <p>12:32:07 4 meetings of this nature.</p> <p>12:32:10 5 Q Okay. Was there a lot of lead time</p> <p>12:32:12 6 in scheduling a special meeting of the board of</p> <p>12:32:15 7 directors, to your knowledge, or were these things</p> <p>12:32:17 8 that came up kind of quickly and were thrown</p> <p>12:32:20 9 together?</p> <p>12:32:20 10 A I think they came up rather quickly.</p> <p>12:32:22 11 I wouldn't say that they were just thrown</p> <p>12:32:24 12 together. I wouldn't characterize it that way.</p> <p>12:32:26 13 Q Right.</p> <p>12:32:27 14 A But there was some lead time, but</p> <p>12:32:29 15 not -- not a lot.</p> <p>12:32:32 16 Q All right. And are you able to</p> <p>12:32:33 17 recall what the purpose of this particular special</p> <p>12:32:37 18 meeting was, why it was called?</p> <p>12:32:43 19 A No. I don't recall the specific</p> <p>12:32:44 20 purpose of this meeting.</p> <p>12:32:57 21 Q Directing your attention -- I mean,</p> <p>12:32:59 22 please read the document at your leisure.</p> <p>12:33:01 23 A Okay.</p> <p>12:33:01 24 Q I'm moving ahead just timewise to get</p>	<p>12:34:59 1 Q Uh-huh.</p> <p>12:35:00 2 A So this is just one factor, I think,</p> <p>12:35:03 3 that made it probably a little worse.</p> <p>12:35:05 4 MR. BESSETTE: In fact, you</p> <p>12:35:06 5 might want to look at the second page. That's</p> <p>12:35:09 6 exactly what was said.</p> <p>12:35:10 7 MR. MARA: I'm not trying to</p> <p>12:35:11 8 restrict the document. I'm just --</p> <p>12:35:25 9 Q (By Mr. Mara) And turning to the</p> <p>12:35:26 10 last page, 004521, there's an item with the</p> <p>12:35:31 11 heading: Directors' and Officers' Insurance.</p> <p>12:35:35 12 A Uh-huh.</p> <p>12:35:35 13 Q And under that heading it says: Darl</p> <p>12:35:39 14 Hatfield reported he has requested estimates to</p> <p>12:35:39 15 increase D&O insurance from 7.5 million to</p> <p>12:35:42 16 15 million, 20 million, 30 million, and 40</p> <p>12:35:47 17 million.</p> <p>12:35:47 18 Is that an accurate statement?</p> <p>12:35:49 19 Did you do that at that time?</p> <p>12:35:50 20 A Yes, I -- I met with an insurance</p> <p>12:35:57 21 consultant who reviewed all of our policies, and</p> <p>12:36:00 22 as part of that review, they recommended this.</p> <p>12:36:04 23 Q Okay. And do you recall what, if</p> <p>12:36:06 24 any, further action you took after this date on</p>
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<p>12:33:05 1 us -- based on your testimony this morning or this</p> <p>12:33:08 2 afternoon, at the bottom of Page 1 is a paragraph</p> <p>12:33:11 3 with the heading: Costco. If you could just read</p> <p>12:33:18 4 that paragraph.</p> <p>12:33:18 5 A (Witness complies.)</p> <p>12:34:01 6 Q Did you have any knowledge of the</p> <p>12:34:03 7 information provided in that paragraph, or was</p> <p>12:34:04 8 that strictly in Chip Brewer and Barney Adams'</p> <p>12:34:09 9 side of the fence?</p> <p>12:34:12 10 A That would primarily be their</p> <p>12:34:16 11 responsibility. I didn't have any specific</p> <p>12:34:18 12 knowledge of it.</p> <p>12:34:19 13 Q Okay. And if you did, then, is it --</p> <p>12:34:21 14 if you had any specific knowledge, would it -- I</p> <p>12:34:24 15 am assuming it would have related just to margins,</p> <p>12:34:28 16 a discussion of --</p> <p>12:34:30 17 A Yeah. I was -- I was totally</p> <p>12:34:32 18 concerned with the effect this would have on our</p> <p>12:34:34 19 financial statements, and I -- you know, I</p> <p>12:34:40 20 hesitated to even say that this -- Costco was, you</p> <p>12:34:43 21 know, the primary reason why these retailers had</p> <p>12:34:51 22 to reduce their selling price. Everybody was</p> <p>12:34:55 23 reducing their selling price just because of</p> <p>12:34:57 24 supply and demand at that time.</p>	<p>12:36:10 1 the D&O insurance issue?</p> <p>12:36:14 2 A Relative to the insurance coverage?</p> <p>12:36:17 3 Q Yeah.</p> <p>12:36:17 4 A We did increase insurance coverage.</p> <p>12:36:19 5 Q Okay. Did you have concerns about</p> <p>12:36:22 6 the prior level of insurance coverage, you</p> <p>12:36:25 7 personally as CFO?</p> <p>12:36:26 8 A I did.</p> <p>12:36:27 9 Q And what were those concerns?</p> <p>12:36:28 10 A I just felt it was low for a public</p> <p>12:36:32 11 company, and when we had the insurance consultant</p> <p>12:36:36 12 review all of our policies, he felt that it was</p> <p>12:36:39 13 low also.</p> <p>12:36:40 14 Q Were there any concerns unique to</p> <p>12:36:44 15 Adams Golf as a company that caused you concern</p> <p>12:36:46 16 about the D&O insurance at that time?</p> <p>12:36:49 17 A No, there was nothing specific. He</p> <p>12:36:50 18 had some rule-of-thumb calculations that he made</p> <p>12:36:56 19 and provided to me, and I don't even recall what</p> <p>12:36:58 20 they were based on; but everything indicated that</p> <p>12:37:01 21 it was low for a public company.</p> <p>12:37:05 22 Q And when you took a look at it, when</p> <p>12:37:08 23 you came on board as CFO, at the existing levels</p> <p>12:37:11 24 of coverage, did you think that they were in the</p>

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12:37:15	1 ballpark, or were they alarmingly low, whatever	12:39:26	1 Q Are you able to recall if any Adams
12:37:20	2 those levels?	12:39:30	2 Golf unique numbers or figures were factored into
12:37:21	3 A No, because I had a number of other	12:39:35	3 that formulation, or to your memory, was it simply
12:37:23	4 things I had to focus on when I came on board, so	12:39:39	4 a generic mathematical --
12:37:26	5 this activity didn't really take place until after	12:39:40	5 A It was a generic mathematical --
12:37:29	6 I had been there a while and we had --	12:39:43	6 Q -- formula?
12:37:32	7 Q Some time.	12:39:44	7 A -- calculation, and nobody had any
12:37:32	8 A -- the insurance consultant come in	12:39:47	8 concerns about anything specific to Adams.
12:37:34	9 and sit down and look at all of our policies.	12:39:58	9 Q Okay. Did you participate in --
12:37:38	10 Q Okay. So you -- you invited the	12:40:01	10 prior to the IPO, did you participate in
12:37:40	11 insurance consultant in as just part of your	12:40:04	11 responding to SEC oral comments on the offering
12:37:42	12 normal business practice, not because you had	12:40:16	12 papers?
12:37:47	13 concluded independently that they were too low?	12:40:16	13 A I did participate in responses to the
12:37:49	14 A No. The -- the insurance consultant	12:40:19	14 SEC. I don't recall when they took place, but I
12:37:52	15 was, as I recall, a friend of one of the board	12:40:24	15 do know that I did participate in some of those.
12:37:58	16 members. He had worked with their company, and he	12:40:26	16 I'm not sure if it was all of them, but --
12:38:00	17 suggested that we have a man -- I think I	12:40:31	17 Q Okay. Specifically, this has been
12:38:09	18 expressed some concern about some insurance in	12:40:33	18 marked as Exhibit 90, but there, as I'm -- you may
12:38:09	19 general, having somebody take a look at it, not	12:40:37	19 be aware, there was a specific inquiry from the
12:38:09	20 specifically the D&O policy, but just our general	12:40:42	20 SEC. I'll just read it: The staff notes that the
12:38:12	21 requirements.	12:40:45	21 company has filed an action in Texas against
12:38:12	22 Q And did you discuss those concerns	12:40:47	22 Costco Companies, Incorporated, d/b/a, Costco
12:38:15	23 with Barney Adams prior to having the insurance	12:40:52	23 Wholesale. Please supplementally advise the staff
12:38:18	24 consultant come in?	12:40:55	24 of the significance of this action.
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12:38:20	1 A I don't know if I discussed them with	12:40:57	1 Again, that's Exhibit 90, and
12:38:22	2 Barney or not at that point. I just -- this was	12:40:59	2 specifically, AH 000007.
12:38:25	3 part of my responsibility, and I felt that we	12:41:07	3 Do you recall if you
12:38:28	4 needed to have somebody that was an expert in the	12:41:08	4 participated in responding to that particular oral
12:38:30	5 area come in and look at our coverage.	12:41:10	5 comment from the SEC?
12:38:37	6 Q Was there any resistance from either	12:41:11	6 A I don't recall that.
12:38:39	7 Barney or the board of directors from increasing	12:41:25	7 Q Okay. I'm sorry. And that wasn't
12:38:42	8 the levels of coverage?	12:41:27	8 particularly fair. Let me read the response just
12:38:47	9 A No. We discussed the cost, and I	12:41:29	9 to complete the record.
12:38:49	10 don't think anybody had any concerns or resistance	12:41:31	10 A Okay.
12:38:52	11 about increasing that.	12:41:31	11 Q The company responds: The company
12:38:56	12 Q On the other side of the coin, was	12:41:33	12 filed a Bill of Discovery with the District Court
12:38:58	13 there strong support to increase the levels of	12:41:34	13 in Collin County, Texas, on June 11th, 1998,
12:39:01	14 coverage?	12:41:38	14 against Costco for the purpose of obtaining the
12:39:01	15 A I wouldn't characterize it as strong	12:41:41	15 identity of the company's distributors, who are
12:39:03	16 support, but when I presented the information that	12:41:41	16 apparently selling the company's products in
12:39:06	17 was provided by the consultant, I think everybody	12:41:44	17 violation of the company's policies and agreements
12:39:10	18 agreed with it. And again, they used a formula,	12:41:47	18 with such distributors. The company does not
12:39:12	19 which I think was based on the market	12:41:50	19 believe that this proceeding is material.
12:39:17	20 capitalization of the stock.	12:41:53	20 So now, having said all that,
12:39:19	21 Q Okay.	12:41:55	21 does that jog your memory at all as to whether or
12:39:20	22 A I don't remember the calculations,	12:41:58	22 not you participated in formulating the response
12:39:21	23 but they had several different type calculations	12:42:00	23 to that oral comment from the SEC?
12:39:24	24 that they made that were presented.	12:42:02	24 A I don't know if I participated in